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No. 83-620

In the Supreme Court of the United States

OCTOBER TERM, 1983

UNITED STATES OF AMERICA, PETITIONER

v.

LARRY WAYNE RODGERS

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE EIGHTH CIRCUIT

BRIEF FOR THE UNITED STATES

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QUESTION PRESENTED

Whether intentionally false, volunteered statements made to federal law enforcement officers relate to matters "within the jurisdiction of any department or agency of the United States," within the meaning of 18 U.S.C. 1001.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 1a-4a) is reported at 706 F.2d 854. The order of the district court dismissing the indictment (Pet. App. 5a-6a) is not reported.

JURISDICTION

The judgment of the court of appeals was entered on May 9, 1983 (Pet. App. 7a). A petition for rehearing was denied on July 25, 1983 (Pet. App. 8a). On September 14, 1983, Justice Blackmun extended the time for filing a petition for a writ of certiorari to and including October 23, 1983. The petition was

filed on October 13, 1983, and was granted on December 5, 1983. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

STATUTE INVOLVED

18 U.S.C. 1001 provides:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain any false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

STATEMENT

On September 2, 1982, a grand jury sitting in the Western District of Missouri returned a two-count indictment charging respondent with making false, fictitious and fraudulent statements and representations to the Federal Bureau of Investigation and the United States Secret Service, in violation of 18 U.S.C. 1001 (J.A. 4-5). Respondent moved to dismiss the indictment for failure to state an offense, and the district court granted his motion (Pet. App. 5a-6a). The court of appeals affirmed (Pet. App. 1a-4a).

1. The facts underlying the indictment, as set forth in the court of appeals' opinion (Pet. App. 2a), show that respondent telephoned the Kansas City, Missouri, office of the FBI on June 2, 1982, and reported that his wife had been kidnapped. The FBI spent more than 100 agent-hours investigating the alleged kid-

napping; as a result, it determined that no kidnapping had occurred and that respondent's wife had left him voluntarily.

On June 15, 1982, respondent contacted the Kansas City office of the Secret Service and reported that his "estranged girlfriend" (actually his wife) had joined in a plot to assassinate the President. The Secret Service spent more than 150 hours of agent and clerical time investigating this threat and eventually located respondent's wife in Arizona. She stated that she had left the Kansas City area in order to get away from respondent. Respondent subsequently confessed that he had made these false reports in order to induce the federal agencies to locate his wife.

2. The district court granted respondent's motion to dismiss the indictment, relying on the Eighth Circuit's holding in *Friedman* v. *United States*, 374 F.2d 363 (1967), that the investigation of a possible criminal violation is not a matter over which the FBI exercises "jurisdiction" in the sense that the term is used in 18 U.S.C. 1001 (Pet. App. 5a-6a).

The court of appeals affirmed, adhering to its reasoning in *Friedman* and finding that the same analysis applies to statements made to the Secret Service (Pet. App. 3a). The court acknowledged that two other courts of appeals had reached a contrary conclusion on similar facts (*ibid.*), but it found its own prior analysis and reasoning "more persuasive" (*id.* at 3a-4a).

SUMMARY OF ARGUMENT

The question presented by this case is whether false crime reports made to the FBI and Secret Service relate to matters "within the jurisdiction of any department or agency of the United States," within the meaning of 18 U.S.C. 1001. The Eighth Circuit has

held that they do not, on the ground that the word "jurisdiction," as used in Section 1001, refers only to "the power to make final or binding determinations," not to "the mere authority to conduct an investigation" (*Friedman* v. *United States*, 374 F.2d 363, 367 (1967)). Two other courts of appeals have rejected the Eighth Circuit's restrictive construction of the statute, and we submit that this Court should also.

A.

1. On its face, Section 1001 plainly embraces false crime reports made to law enforcement agencies. The statute's proscription is written in broad, sweeping terms, and the Eighth Circuit's cramped construction of the word "jurisdiction" is inconsistent with that generous phraseology.

Moreover, the ordinary meaning of the word "jurisdiction" is not the specialized definition that the Eighth Circuit arbitrarily assigned to it, but refers simply to the "power or right to exercise authority" in a particular situation. Because the FBI has authority to "detect and prosecute crimes against the United States" (28 U.S.C. 533(1)), including kidnapping, and because the Secret Service is authorized "to protect the person of the President" (18 U.S.C. 3056), those agencies plainly had "jurisdiction" over respondent's false reports that his wife had been kidnapped and his "estranged girlfriend" had joined a plot to assassinate the President.

In addition, it is beyond dispute that the FBI and Secret Service are "department[s] or agenc[ies] of the United States" within the meaning of 18 U.S.C. 1001. It is most unlikely, in our view, that Congress, having written Section 1001 to cover broadly "any department or agency of the United States," would

have intended, simply by the use of the word "jurisdiction," to remove such important government agencies as the FBI and the Secret Service from the protection of the statute.

2. In *United States* v. *Gilliland*, 312 U.S. 86, 93 (1941), the Court described the purpose of Section 1001 as being "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described." As the Court recognized, the "within the jurisdiction" language was not intended to distinguish between different types of agencies or administrative functions, but only to differentiate between matters peripheral to the business of the department or agency involved and the official, authorized functions of that body. On both subsequent occasions the Court has had to address the scope of Section 1001, it also has indicated that the statute should be broadly construed. The restrictive definition the Eighth Circuit assigned to the word "jurisdiction" in Section 1001 is entirely at odds with this Court's consistently expansive interpretation of the statute.

B.

The Eighth Circuit erred in restricting application of the all-inclusive language of the statute to the specific circumstances that provided the initial impetus for the 1934 amendment to the false statement statute that inserted the crucial "matter within the jurisdiction" language. To be sure, an immediate motivation underlying the 1934 revision was to make criminal the giving of false information to certain newly-created regulatory agencies. But nothing in the relevant legislative history suggests that protecting the regulatory agencies from false information was the exclusive purpose of the statute.

Moreover, when in prior versions of the false statement statute Congress intended to restrict the reach of the statute to false statements made for particular purposes, it enumerated those purposes expressly. The fact that Congress deleted any requirement of purpose in 1934 is strong evidence that it did not intend the statute to apply only to false statements made for the particular purposes identified by the Eighth Circuit—to obtain a monetary award or governmental privilege or to affect an administrative determination.

In addition, in a predecessor bill to the 1934 amendment, Congress deliberately substituted the words "any department or agency" of the United States for a limited list of enumerated agencies with whose protection the sponsor of the legislation was immediately concerned. In our view, this is further proof that Congress did not intend application of the broadly worded statute to be restricted to the particular circumstances that provided the initial motivation underlying the legislation.

C.

None of the *Friedman* court's additional objections to the literal construction of Section 1001 warrants departure from the plain meaning of the language employed by Congress. The fact that the penalty provided for a violation of Section 1001 exceeds the penalty provided under the general perjury statute, 18 U.S.C. 1621, is no reason for distinguishing between false statements made to investigative agencies and false statements made to regulatory agencies, since neither category of statements is inherently more serious or more blameworthy than the other.

Nor would the plain meaning construction of Section 1001 "render useless" "[t]he numerous statutes

authorizing investigative agencies to administer oaths" (374 F.2d at 367). Except in particular circumstances not applicable here, FBI and Secret Service agents are not authorized to administer oaths. Furthermore, the court of appeals erred in assuming that if Section 1001 applies to false crime reports made to the FBI and Secret Service it must also reach false statements made under oath during judicial proceedings.

Moreover, there is no substantial danger that a construction of Section 1001 that covers false crime reports would deter individuals from conveying information that they believed to be truthful to the FBI or other law enforcement agencies.

Finally, the conduct at issue here is deserving of criminal sanction. The plain language of Section 1001 covers such conduct, and the Eighth Circuit has offered no persuasive reason why that language should not be afforded its full scope.

ARGUMENT

INTENTIONALLY FALSE, VOLUNTEERED STATEMENTS MADE TO LAW ENFORCEMENT OFFICERS RELATE TO MATTERS "WITHIN THE JURISDICTION" OF A "DEPARTMENT OR AGENCY OF THE UNITED STATES" WITHIN THE MEANING OF 18 U.S.C. 1001

In *Friedman* v. *United States*, 374 F.2d 363 (1967), on which the courts below relied in dismissing the indictment against respondent, a divided panel of the Eighth Circuit held that a conviction under 18 U.S.C. 1001 could not be predicated on the defendant's false, volunteered complaint to the FBI of his alleged mistreatment by state police officers, which the defendant claimed violated his civil rights. The court based its

ruling on the conclusion (374 F.2d at 365-366) "that the 'jurisdiction' of the F.B.I. to investigate crimes against the United States is not the 'jurisdiction' envisioned by § 1001."

Although the *Friedman* court acknowledged (374 F.2d at 366-368) that the application of 18 U.S.C. 1001 to the facts before it would be consistent with the literal language of the statute, it held that such an application would not comport with the "context * * * envisioned by the drafters" (*id.* at 366). The court relied heavily on the fact that the critical language—"in any matter within the jurisdiction of any department or agency of the United States"—was inserted in 1934, as "the government, at an accelerated pace, began entering the field of economic reform and regulation" (*ibid.*). According to the court of appeals (*ibid.*), "the immediate and primary purpose in amending the * * * statute was to curtail the flow of false information to the newly created regulative agencies." Reasoning from that premise the court concluded (*ibid.*):

> Though the statute was drafted in broad inclusive terms, presumably due to the numerous agencies and the wide variety of information needed, there is nothing to indicate that Congress intended this statute to have application substantially beyond the purposes for which it was created.

The court implemented its conclusion by distinguishing (*id.* at 367) between the power "to make monetary awards, grant governmental privileges, or promulgate binding administrative and regulative determinations," and "the mere authority to conduct an investigation in a given area without the power to dispose of the problems or compel action." Accord-

ing to the Eighth Circuit (*id.* at 368), Congress used the word "jurisdiction" in Section 1001 in only the former, more restrictive sense.

The court of appeals bolstered its decision by referring to 18 U.S.C. 1621, which prescribes a lesser maximum penalty than does Section 1001, and observing that Congress could not have "considered it more serious for one to informally volunteer an untrue statement to an F.B.I. agent than to relate the same story under oath before a court of law." 374 F.2d at 366 & n.1. The court further opined (*id.* at 367) that "a literal application of the statute would completely remove the necessity for taking oaths." Finally, the court apparently was strongly influenced by its fear that adoption of the government's position would inhibit citizens from reporting suspected crimes to the police. *Id.* at 369.

Since 1967, two other courts of appeals have rendered decisions directly in conflict with *Friedman*, and no other court of appeals has indicated agreement with the Eighth Circuit's view. In *United States* v. *Adler*, 380 F.2d 917, cert. denied, 389 U.S. 1006 (1967), decided only four months after *Friedman*, the Second Circuit rejected both the reasoning and the result of that decision, concluding (*id.* at 922) that "the word 'jurisdiction' as used in the statute must mean simply the power to act upon information when it is received." On that basis, the court upheld the conviction under Section 1001 of the president of a construction company who falsely reported to an FBI agent that he had been forced to pay bribes to government officials in the course of completing a construction contract at a government installation.

Similarly, in *United States* v. *Lambert*, 501 F.2d 943, 945-946 (1974), the en banc Fifth Circuit ex-

pressly stated its preference for the Second Circuit's approach in *Adler* over the Eighth Circuit's in *Friedman*.[1] Deeming itself "bound * * * [by this Court's decisions] to give [the "matter within the jurisdiction"] language a broad, nontechnical meaning," the court concluded that a statement "falsely pointing to possible criminal conduct that is within the power of the FBI to investigate * * * is a 'matter within [FBI] jurisdiction' under § 1001" (501 F.2d at 946; footnote omitted). See also *United States* v. *Massey*, 550 F.2d 300, 305 (5th Cir. 1977).

As we show below, the Second and Fifth Circuits were correct in concluding that Section 1001 applies to intentionally false statements volunteered to law enforcement agencies.[2] On its face, the language of

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[1] A panel of the Fifth Circuit initially had reversed the conviction in *Lambert*, adopting the reasoning of *Friedman* v. *United States*, *supra*. On the court of appeals' own motion, it granted rehearing and vacated the opinion of the panel. The court nevertheless reversed the conviction on the alternative ground that there was a fatal variance between the indictment and the proof. 501 F.2d at 946.

[2] Because this case is limited to false statements that are volunteered to law enforcement agencies, it does not raise the question presented by the so-called "exculpatory no" cases, in which the alleged violation of Section 1001 arises out of the defendant's negative response to a law enforcement officer's inquiry into his involvement in a crime. See *United States* v. *Chevoor*, 526 F.2d 178, 182-184 (1st Cir. 1975), cert. denied, 425 U.S. 935 (1976) (Section 1001 inapplicable to "exculpatory no" situation); *United States* v. *Bush*, 503 F.2d 813, 818-819 (5th Cir. 1974) (same); *United States* v. *Bedore*, 455 F.2d 1109, 1110-1111 (9th Cir. 1972) (same); *Paternostro* v. *United States*, 311 F.2d 298, 305, 309 (5th Cir. 1962) (same). But see *United States* v. *Goldfine*, 538 F.2d 815, 821 (9th Cir. 1976) (Section 1001 applicable to false responses given to DEA agents); *United States* v. *Ratner*, 464 F.2d 101,

the statute covers such conduct, and nothing in the legislative history suggests that Congress intended anything other than the plain meaning of the language it employed. Nor do the additional arguments advanced by the Eighth Circuit or relevant policy considerations warrant departure from the plain language of the statute.

A. The Plain Language of Section 1001 Reaches False Crime Reports Voluntarily Made to Law Enforcement Agencies

1. As this Court has frequently noted:

> In determining the scope of a statute, we look first to its language. If the statutory language is unambiguous, in the absence of "a clearly expressed legislative intent to the contrary, that language must ordinarily be regarded as conclusive."

Russello v. *United States*, No. 82-472 (Nov. 1, 1983), slip op. 4 (quoting *United States* v. *Turkette*, 452 U.S. 576, 580 (1981) (citation omitted)). See also *Dickerson* v. *New Banner Institute, Inc.*, No. 81-1180 (Feb. 23, 1983), slip op. 7; *Consumer Product Safety*

102-105 (9th Cir. 1972) (Section 1001 applicable to false responses given to IRS agents). Those courts that have declined to apply Section 1001 to the "exculpatory no" situation generally have done so on the ground that a negative response to an inquiry by a law enforcement officer is not a "statement" within the meaning of Section 1001. See *United States* v. *Chevoor*, 526 F.2d at 182, 184; *United States* v. *Bedore*, 455 F.2d at 1110; *Paternostro* v. *United States*, 311 F.2d at 300-305. As a matter of prosecutive policy, the Department of Justice does not charge false denials of criminal activity by suspects to federal law enforcement agencies as violations of Section 1001. See Memorandum for the United States at 8-9 in *Nunley* v. *United States*, 434 U.S. 962 (1977); see also *United States Attorneys' Manual* tit. 9, ch. 42, at 15-17 (Jan. 17, 1977).

Commission v. *GTE Sylvania, Inc.*, 447 U.S. 102, 108 (1980). The language of Section 1001 plainly encompasses false crime reports voluntarily made to the FBI and the Secret Service.

Section 1001 makes it a crime "in *any* matter within the jurisdiction of *any* department or agency of the United States knowingly and willfully [to] * * * make[] *any* false, fictitious or fraudulent statements or representations" (emphasis added). The statute's proscription is clearly worded and written in broad, sweeping terms. See *United States* v. *Bramblett*, 348 U.S. 503, 508 (1955); *United States* v. *Gilliland*, 312 U.S. 86, 91 (1941). As the Second Circuit observed in *Adler*, 380 F.2d at 922, the Eighth Circuit's "restrictive interpretation of the word 'jurisdiction' as used in § 1001 cannot be reconciled with the broad interpretation applied to other terms in the statute." See also *Russello* v. *United States*, slip op. 5 ("Congress selected this general term apparently because it was fully consistent with the pattern of the * * * statute in utilizing terms and concepts of breadth").

Moreover, because the word "jurisdiction" is not specifically defined in Section 1001, we " 'start with the assumption that the legislative purpose is expressed by the ordinary meaning of the words used.' " *Russello*, slip op. 4 (quoting *Richards* v. *United States*, 369 U.S. 1, 9 (1962)). See also *INS* v. *Phinpathya*, No. 82-91 (Jan. 10, 1984), slip op. 5. In its ordinary sense, the word "jurisdiction" denotes simply the "power or right to exercise authority" in a particular situation. See *Webster's Third New International Dictionary* 1227 (1976).[8] 28 U.S.C. 533

[8] Although the first sense of "jurisdiction" listed in *Webster's* is "the legal power, right, or authority to hear and determine a cause considered either in general or with refer-

(1) expressly authorizes the Justice Department and the FBI "to detect and prosecute crimes against the United States," of which kidnapping undisputably is one (see 18 U.S.C. 1201). Likewise, 18 U.S.C. 3056 empowers the Secret Service "to protect the person of the President." These agencies thus plainly had "jurisdiction" with respect to the subject matter of respondent's false reports that his wife had been kidnapped and that his "estranged girlfriend" had joined a plot to assassinate the President.

Indeed, the Eighth Circuit acknowledged that the application of Section 1001 to false reports of crime made to the FBI would be consistent with a "literal interpretation" of the statute (*Friedman*, 374 F.2d at 366), and that the word "jurisdiction" in its "broad sense" encompasses the FBI's "authority to investigate" (*id.* at 368). Eschewing the plain language of the statute, however, that court narrowly defined "jurisdiction" for purposes of Section 1001 as "the power to make final or binding determinations," *i.e.*, the "power to make monetary awards, grant governmental privileges, or promulgate binding administrative and regulative determinations" (*id.* at 367). The court excluded from the definition of "jurisdiction" in Section 1001 "the mere authority to conduct an investigation in a given area without

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ence to a particular matter: legal power to interpret and administer the law in the premises" (*Webster's* at 1227), the explanatory notes to the dictionary (*id.* at 17a) make clear that the order of the senses is purely historical. The later sense thus expresses the more ordinary usage today, while the former would block application of the statute in many circumstances, such as the making of payments under federal contracts, in which its applicability is well settled and undisputed.

the power to dispose of the problems or compel action" (*ibid.*). There is no basis for the Eighth Circuit's cramped construction of the statute.

To be sure, the word "jurisdiction" is susceptible to more than one meaning. In its most technical sense, for example, it denotes the power of a court to decide cases. *Black's Law Dictionary* 991 (rev. 4th ed. 1968). But Congress clearly did not have this limited meaning in mind when it enacted Section 1001. See *Ogden* v. *United States*, 303 F.2d 724, 743 n.73 (9th Cir. 1962) ("[t]he term 'jurisdiction' is not used in the Act in a technical sense"). Moreover, so far as we can determine, no standard dictionary has defined "jurisdiction," as did the court in *Friedman*, to refer *solely* to the regulatory or administrative authority of the departments and agencies of the government.[4] While it surely is true that

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[4] The only authority cited by the *Friedman* court (374 F.2d at 367) in support of its narrow construction of the word "jurisdiction" is *Gonzales* v. *United States*, 286 F.2d 118 (10th Cir. 1960). That case, however, does not bear the heavy reliance the Eighth Circuit has placed on it.

In the first place, the court in *Gonzales* was not concerned with any purported distinction between investigative and regulatory jurisdiction. The agency involved in that case, the Rural Electrification Administration, was clearly of the regulatory sort: the only issue was whether it had "jurisdiction" over information that it had no authority to require the defendant to provide.

Moreover, although, in our view, the investigative and prosecutorial authority vested in the FBI, Department of Justice and Secret Service satisfies the " 'right to say and the power to act' " criterion, 374 F.2d at 367, we further note that, in relying on this particular aspect of "jurisdiction," the *Friedman* court quoted only a portion of the definition set forth in *Gonzales*, 286 F.2d at 123 (quoting *Carroll Vocational*

making monetary awards, granting governmental privileges and promulgating administrative and regulative determinations are "matters within the jurisdiction" of the regulatory agencies, they are no more so than investigating reports of federal crime is a "matter within the jurisdiction" of the FBI or than investigating reports of plots to assassinate the President is a "matter within the jurisdiction" of the Secret Service. Had Congress intended the restrictive, highly specialized meaning of "jurisdiction" assigned to the word by the Eighth Circuit, "its purpose could readily have been accomplished by inserting an appropriate descriptive or limiting clause." *Friedman*, 374 F.2d at 375 (dissenting opinion).

Furthermore, the distinction drawn by the Eighth Circuit between the investigative authority of the FBI (and the Secret Service) and the administrative authority exercised by the regulatory agencies—which the *Friedman* court described (374 F.2d at 367) as "the fundamental difference between the naked authority of a body to act and the power to make final or binding determinations"—is not nearly so clearcut as the court portrayed it. As a result of an investiga-

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Institute v. *United States*, 211 F.2d 539, 540 (5th Cir. 1954) (emphasis added)):

> "Jurisdiction means the right to say and the power to act; *and, as between agencies of the government, jurisdiction is the power of that particular agency to administer and enforce the law.*"

Since the FBI, the Justice Department, and the Secret Service are charged by law with, respectively, the detection and prosecution of crimes against the United States and the protection of the President, they clearly are "administer[ing] and enforc[ing] the law," and thus exercising "jurisdiction" within the intendment of *Gonzales*, when they investigate false reports of crime like those made by respondent.

tion by the FBI, the Department of Justice may decide not to institute prosecution. Such a determination, not being subject to judicial review, surely qualifies as one that is "final or binding." By contrast, administrative action generally is subject to judicial review (see 5 U.S.C. 702 *et seq.*). In this sense, it is the regulatory agencies that lack "the power to dispose of the problems or compel action" (374 F.2d at 367). There thus is no principled basis for the distinction among types of "jurisdiction" that the Eighth Circuit has attempted to draw.

Moreover, it is beyond dispute that the FBI and the Secret Service are "department[s] or agenc[ies] of the United States" within the meaning of Section 1001. See 374 F.2d at 365; *United States* v. *Stark*, 131 F. Supp. 190, 194 (D. Md. 1955); see also 18 U.S.C. 6. Yet, if the Eighth Circuit's view were the correct one—if "the investigation of a possible violation of the criminal law is not a matter over which the FBI exercises 'jurisdiction' " (374 F.2d at 368)—agencies such as the FBI and the Secret Service would not be covered by the statute. Like Judge Register, who dissented in *Friedman*, 374 F.2d at 375, we find it altogether unlikely that, having broadly drawn Section 1001 to apply to "any department or agency of the United States," Congress would have expressed its intention to exclude the FBI and other investigative agencies from the coverage of the statute by the simple, unadorned use of the word "jurisdiction": "I [cannot] believe that, in this manner, Congress intentionally excepted, for all practical purposes, such an important governmental agency from the plain meaning of 'any department or agency.' " As the Second Circuit observed in *United States* v. *Adler*, 380 F.2d at 922, "[t]here is nothing

to suggest, either in the legislative history or in the cases, that Congress in enacting § 1001 intended to conserve the energies of only certain agencies." See also *United States* v. *McCue*, 301 F.2d 452, 454-455 (2d Cir. 1962).

2. The unnaturally restrictive construction placed on the word "jurisdiction" in Section 1001 by the Eighth Circuit is also inconsistent with the generally expansive interpretation this Court has given the statute. See generally Note, *Fairness in Criminal Investigations Under the Federal False Statement Statute*, 77 Colum. L. Rev. 316, 318 (1977).

The Court has had three occasions to address the scope of Section 1001; in all three the Court rejected proposed narrowing constructions of the statute.[5] In the first case, *United States* v. *Gilliland*, 312 U.S. 86 (1941), the Court rejected the contention that, notwithstanding the substitution in 1934 of the phrase "in any matter within the jurisdiction of any department or agency of the United States" for the phrase "for the purpose and with the intent of * * * defrauding the Government of the United States" (Act of Oct. 23, 1918, ch. 194, 40 Stat. 1015), the statute should continue to be restricted to cases involving pecuniary or property loss to the government.[6] At

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[5] Another case involving the scope of 18 U.S.C. 1001 is currently pending before the Court. *United States* v. *Yermian*, cert. granted, No. 83-346 (Nov. 28, 1983). *Yermian* presents the question whether, in a prosecution under Section 1001 for making a false statement, the government must prove that the defendant knew that the statement was made "in [a] matter within the jurisdiction of [a] department or agency of the United States."

[6] In *United States* v. *Cohn*, 270 U.S. 339, 346-347 (1926), the Court had construed the word "defrauding" in 40 Stat. 1015 "in the manner in which those words are ordinarily

the outset, the Court noted (312 U.S. at 91) "the broad language of the statutory provision here involved." Moreover, the Court explained (*id.* at 93), the purpose of the statute is "to protect the authorized functions of governmental departments and agencies from the perversion which might result from the deceptive practices described. We see no reason why this apparent intention should be frustrated by construction."

It would be entirely at odds with this broad statutory purpose to construe the term "jurisdiction" as referring only to rule-making or adjudicative power rather than to authority or power in general. The *Gilliland* Court did not single out certain types of governmental functions as covered by the statute, but referred generally to the "*authorized* functions of governmental departments and agencies" (312 U.S. at 93; emphasis added). As the Court thus indicated, the "within the jurisdiction" phrase was not meant to distinguish between different types of agencies or different official functions of a particular agency, but was intended only to differentiate between matters outside of or peripheral to the business of the department or agency involved and matters constituting the official, authorized functions of that body. This Court noted in *Gilliland*, 312 U.S. at 93, that it is the perversion and disruption of these "authorized functions" with which the statute is concerned.

As we showed above (pages 12-13, *supra*), investigating reports of crime and investigating reports of plots to kill the President are among the quintessential functions of the FBI and Secret Service. Here,

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used, as relating to the fraudulent causing of pecuniary or property loss."

the false charges made by respondent predictably set those functions into motion, causing the time and energies of several agents and other employees to be diverted from other, bona fide investigations to aid in the search for respondent's estranged wife. In short, respondent, for his own purposes, willfully perverted the agencies' authorized function of investigating criminal activity.

The phrase "within the jurisdiction of any department or agency of the United States" also was construed broadly in *United States* v. *Bramblett*, 348 U.S. 503 (1955). There, the Court upheld the conviction under Section 1001 of a former member of Congress for having falsely represented to the Disbursing Office of the House of Representatives that a certain woman was entitled to compensation as his official clerk. Noting (*id.* at 508) the "broad scope" of the statute, the Court rejected the defendant's contention that only an executive agency could constitute a department or agency of the United States within the meaning of 18 U.S.C. 1001. The Court observed (348 U.S. at 507-509 (footnotes omitted)):

> There is no indication in either the committee reports or in the congressional debates that the scope of the statute was to be in any way restricted. There was certainly no suggestion that the new phrase ["in any matter within the jurisdiction, of any department or agency of the United States"] was to be interpreted so that only falsifications made to executive agencies would be reached. Apparently the * * * phrase was inserted simply to compensate for the deleted language as to purpose—to indicate that not all falsifications but only those made to government organs were reached.
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> * * * * * *

> The context in which this language is used calls for an unrestricted interpretation. This is enforced by its legislative history. It would do violence to the purpose of Congress to limit the section to falsifications made to the executive departments.

Although the specific concern of the Court in *Bramblett* was whether legislative and judicial, as well as executive, agencies were "department[s] or agenc[ies]" within the meaning of 18 U.S.C. 1001, the Court's broad construction of the statute strongly suggests that *all* governmental agencies, regardless of the *nature* of the function they are authorized to perform, are covered by the statute. The holding of the court below, that agencies endowed only with investigative authority are not protected by the statute, is inconsistent with the essential thrust of the Court's opinion in *Bramblett*.

The Court most recently construed the word "jurisdiction," as used in Section 1001, in *Bryson* v. *United States*, 396 U.S. 64 (1969). Bryson had been convicted under Section 1001 for filing an affidavit with the National Labor Relations Board, required by then existing Section 9(h) of the National Labor Relations Act, 29 U.S.C. (1958 ed.) 159(h), in which he falsely denied affiliation with the Communist Party. *Bryson* involved a collateral attack on that conviction based on the alleged unconstitutionality of Section 9(h).

This Court affirmed the denial of collateral relief, holding (396 U.S. at 68-69) that the constitutionality of Section 9(h) was irrelevant to the validity of Bryson's conviction because "none of the elements of proof necessary for [Bryson's] conviction under § 1001 has been shown to depend on the validity of

§ 9(h)." Of particular relevance to the present case is the basis for the Court's rejection of Bryson's contention that, because Section 9(h) was unconstitutional, the affidavit requirement was not within the "jurisdiction" of the NLRB. Relying on its prior decisions in *Bramblett* and *Gilliland* for the proposition (396 U.S. at 70) that "there is a valid legislative interest in protecting the integrity of official inquiries," the Court concluded (*ibid.*) that "the term 'jurisdiction' should not be given a narrow or technical meaning for purposes of § 1001."

The court below attempted to distinguish *Bryson* on the ground (Pet. App. 4a) that "[t]he NLRB is an agency with the power to adjudicate rights and establish regulations" and therefore, "under the *Friedman* rationale, would be distinguishable from agencies such as the FBI and Secret Service." In fact, however, neither the adjudicative nor the regulatory aspect of the NLRB's jurisdiction was necessarily involved in *Bryson*. Rather, the affidavit described in Section 9(h) was a prerequisite to the exercise of even the Board's investigatory and prosecutorial powers—*i.e.*, "to the making of an investigation by the Board and the issuance of any complaint for the benefit of the union in question" (*Leedom* v. *International Union of Mine Workers*, 352 U.S. 145, 148 (1956))[7]—precisely the type of "jurisdiction"

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[7] 29 U.S.C. (1958 ed.) 159(h) provided in relevant part (emphasis added):

> No *investigation* shall be made by the Board of any question affecting commerce concerning the representation of employees, raised by a labor organization under subsection (c) of this section, and no *complaint* shall be issued pursuant to a charge made by a labor organization under subsection (b) of section 160 of this title, unless there is on file with the Board an affidavit * * *.

that is exercised by the Department of Justice, the FBI and the Secret Service.

Moreover, in holding (396 U.S. at 70) that the "term 'jurisdiction' should not be given a narrow or technical meaning for purposes of § 1001," the Court relied directly (*id.* at 70-71) on two cases that endorsed the ordinary "power to act" meaning of "jurisdiction" that we urge. In *United States* v. *Adler*, *supra*, cited at 396 U.S. 71, the Second Circuit concluded that the word "jurisdiction," as used in Section 1001, means "simply the power to act upon information when it is received"; on that ground, the court held that false statements made to the FBI were "within the jurisdiction" of that agency (380 F.2d at 922). Similarly, in *Ogden* v. *United States*, 303 F.2d 724 (9th Cir. 1962), cited at 396 U.S. 70-71, the Court held that false statements made in an application for a security clearance by the Air Force were "within the jurisdiction" of the Air Force regardless of whether Air Force regulations required the statements, the need for the clearance was immediate, or the Air Force actually relied on the statements to its injury. The Court explained (303 F.2d at 743):

> A false statement is submitted in a matter within the jurisdiction of a department or agency within the meaning of 18 U.S.C.A. § 1001 if it relates to a matter as to which the Department had the power to act. The Department of the Air Force had ample power to act with respect to classified defense information. It was no interloper here—its interest in the subject matter was official and immediate.

Hence, although the Court in *Bryson* did not focus specifically on the types of agencies or the nature of

the administrative functions to which Section 1001 is applicable,[8] the Court's analysis strongly suggests that the Eighth Circuit's highly technical distinction between types of jurisdiction will not withstand scrutiny.

B. The Legislative History Contains No Support for the Court of Appeals' Refusal to Give Section 1001's Language Its Ordinary Meaning

Ignoring this Court's frequent admonition that the process of statutory construction begins with the language of the statute itself, the *Friedman* court instead commenced its "examination of [Section 1001] * * * by viewing the historical circumstances in which [the statute] was cast" (374 F.2d at 366). Even this approach, however, does not yield the result urged by the court of appeals and respondent. This Court has repeatedly examined the same history of Section 1001 on which the Eighth Circuit relied (*ibid.*) and has found no basis for avoiding a literal application of this broadly worded statute. See *Bramblett*, 348 U.S at 507-508; *Gilliland*, 312 U.S. at 93-95. Nor have we discovered anything in the scant history of the language at issue here that justifies the court of appeals' departure from the plain language of the statute.

1. Section 1001 has its origin in a law enacted more than a century ago. The first proscription of unsworn false statements was included in a statute passed during the Civil War to punish the knowing presentation of false or fraudulent monetary claims against the United States. False statements were

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[8] The court noted in *Bryson* (396 U.S. at 71 n.10): "We have no occasion in the present context either to approve or disapprove *Friedman*'s holding."

punishable only if they furthered "the purpose of obtaining, or aiding in obtaining, the approval or payment of such claim[s]." Act of Mar. 2, 1863, ch. 67, § 1, 12 Stat. 696. In 1918, Congress broadened the false claims proscription to include as well false statements made "for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States." Act of Oct. 23, 1918, ch. 194, 40 Stat. 1015.

The language of Section 1001 that is at issue here first appeared in the 1934 revision of the false claims/false statements statute. Until that time, punishable false statements remained closely linked to monetary and proprietary fraud upon the government.[9] The 1934 amendment deleted the requirement of a specific purpose, however, and enlarged the scope of punishable false statements to include false statements made "in any matter within the jurisdiction

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[9] Prior to the 1934 amendment, the false statement portion of the statute provided (40 Stat. 1015-1016):

> [W]hoever, for the purpose of obtaining or aiding to obtain the payment or approval of such claim, or for the purpose and with the intent of cheating and swindling or defrauding the Government of the United States, or any department thereof, or any corporation in which the United States of America is a stockholder, shall knowingly and willfully falsify or conceal or cover up by any trick, scheme, or device a material fact, or make or cause to be made any false or fraudulent statements or representations, or make or use or cause to be made or used any false bill, receipt, voucher, roll, account, claim, certificate, affidavit, or deposition, knowing the same to contain any fraudulent or fictitious statement or entry * * * shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

See also note 6, *supra*.

of any department or agency of the United States or of any corporation in which the United States of America is a stockholder." Act of June 18, 1934, ch. 587, 48 Stat. 996.[10] The legislative history of the amendment indicates that the class of proscribed false statements was enlarged in response to a request by the Secretary of the Interior for legislation broad enough to punish the presentation of false papers in connection with the shipment of "hot oil" [11] and the submission of false statements of wages paid on Public Works Administration projects. S. Rep. 1202, 73d Cong., 2d Sess. (1934). See also *United States* v. *Bramblett*, 348 U.S. at 507; *United States* v. *Gilliland*, 312 U.S. at 93-95.

2. Noting (374 F.2d at 366) that the initial impetus for the 1934 amendment was the Secretary of the Interior's request for regulation of "hot oil" shipments and that the revision was made at the same time "the government, at an accelerated pace, began entering the field of economic reform and regulation," *Friedman* concluded (*ibid.*) that the "immediate and primary purpose in amending the old 'fraudulent claims' statute was to curtail the flow of false infor-

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[10] The current form of the statute is the result of the 1948 revision of Title 18. The false claims portion of the statute became 18 U.S.C. 287; the false statements portion became 18 U.S.C. 1001. Act of June 25, 1948, ch. 645, 62 Stat. 683, 698, 749.

[11] "Hot oil" was oil produced cheaply enough to be sold for less than the parity price established under regulations promulgated under the National Industrial Recovery Act, Pub. L. No. 73-67, § 9, 48 Stat. 200. The government wanted to eliminate the shipment and sale of such oil in order to restore healthy competitive conditions to the market. See *United States* v. *Socony-Vacuum Oil Co.*, 105 F.2d 809, 816-818 (7th Cir. 1939), rev'd, 310 U.S. 150, 171-174 (1940).

mation to the newly created regulative agencies." The court added (*ibid.*): "Though the statute was drafted in broad inclusive terms, presumably due to the numerous agencies and the wide variety of information needed, there is nothing to indicate that Congress intended this statute to have application substantially beyond the purposes for which it was created."

The Eighth Circuit's analysis of the legislative history is fundamentally flawed. To be sure, an immediate motivation underlying the 1934 amendment was to criminalize the giving of false information to certain newly-created regulatory agencies. But nowhere in the legislative history did Congress indicate that protecting the regulatory agencies with which the legislation's sponsors were immediately concerned was the exclusive purpose of the statute. To the contrary, neither the committee reports [12] nor the brief floor debates [13] contain the slightest suggestion that "the scope of the statute was to be in any way restricted" or the word "jurisdiction" narrowly construed. *Bramblett*, 348 U.S. at 507. More specifically:

> The legislative history does not suggest that the purpose of the amendment was in any way intended to be confined to the specific situations which were mentioned. The very broad language of the amendment suggests that these situations were merely cited as examples of the kind of conduct which the statute was designed to prohibit. And the quite different character of the two examples which were given [the prevention

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[12] S. Rep. 1202, *supra*; H.R. Rep. 1463, 73d Cong., 2d Sess. (1934).

[13] 78 Cong. Rec. 8136-8137, 11270-11271, 11513 (1934).

> of false reports on shipments of "hot oil" and false statements of wages paid on Public Works Administration projects] may also be taken as representing the broad application intended for the statute.

United States v. *McCue*, 301 F.2d 452, 454-455 (2d Cir. 1962). As this Court noted in *Gilliland*, 312 U.S. at 95, "[t]he fact that the Secretary of the Interior was [in 1934] seeking aid in the enforcement of § 9(c) of the National Industrial Recovery Act * * * in no way affects the present application of the statute. Its provisions were not limited to the enforcement of § 9(c) of the National Industrial Recovery Act * * *."

The *Friedman* court thus erred in concluding that what "was surely a key part of [the] program" was "the *sole* purpose of the [statute]." *United States* v. *Naftalin*, 441 U.S. 768, 775 (1979) (emphasis in original). The court similarly erred in refusing to apply Section 1001 to conduct that plainly is covered by the statutory language simply because there was no express mention in the legislative history of an intent to reach the conduct at issue. As this Court noted in *Harrison* v. *PPG Industries, Inc.*, 446 U.S. 578, 592 (1980) (footnote omitted), "it would be a strange canon of statutory construction that would require Congress to state in committee reports or elsewhere in its deliberations that which is obvious on the face of a statute. In ascertaining the meaning of a statute, a court cannot, in the manner of Sherlock Holmes, pursue the theory of the dog that did not bark." See also *Standefer* v. *United States*, 447 U.S. 10, 20 n.12 (1980) (rejecting argument that "would permit an omission in the legislative history to nullify the plain meaning of a statute"). Here, as in *United*

States v. *Culbert*, 435 U.S. 371, 377 (1978), nothing in the legislative history "supports the conclusion that Congress did not intend to make punishable all conduct falling within the reach of the statutory language."

Indeed, if anything, the history of Section 1001 reinforces its plain language. When, in previous versions of the false statement statute, Congress intended to restrict the reach of the statute to false statements made for particular purposes, it enumerated those purposes expressly. As noted above, the Act of March 2, 1863, specified that false statements were punishable only if they furthered "the purpose of obtaining, or aiding in obtaining, the approval or payment of [a false] claim" (12 Stat. 696). The Act of October 23, 1918, added the proscription against false statements made "for the purpose * * * of cheating and swindling or defrauding the Government of the United States" (40 Stat. 1015). By the 1934 revision, however, Congress deleted outright any requirement of purpose (see *Bramblett*, 348 U.S. at 507-508) and substituted the broad "in any matter within the jurisdiction of any department or agency" language. Had Congress intended the statute to apply only to false statements made for the purposes identified by the Eighth Circuit—to obtain a monetary award or governmental privilege or to affect an administrative determination—it surely would have stated this requirement expressly, as it always had done in the past, rather than relying on an oblique reference to "jurisdiction" to convey its meaning.

Furthermore, the version of the 1934 amendment to the false statement statute that finally was enacted (48 Stat. 996) represented that Congress's second attempt to broaden the statute. Unlike the 1934 amend-

ment that became law, the earlier bill, as amended by the House and passed by Congress, had required an "intent to defraud the United States." Although the President refused to sign the earlier bill on the ground that the offense, as so defined, already was covered, and more severely punished, by existing law (see 78 Cong. Rec. 6778-6779 (1934)), the history of the prior bill is instructive with respect to the question whether Congress intended Section 1001's protection to be limited only to certain, newly created regulatory agencies.

The first bill, as proposed by the Secretary of the Interior, was entitled a bill "to provide a penalty for the presentation of a false written instrument relating to any matter within the jurisdiction of the Secretary of the Interior, Administrator of the Federal Emergency Administration of Public Works, or Administrator of the Code of Fair Competition for the Petroleum Industry." See S. Rep. 288, 73d Cong., 2d Sess. 1 (1934). It provided (78 Cong. Rec. 2152 (1934)) (emphasis added)):

> That every person who knowingly or willfully makes or aids, or assists in the making, or in any wise procures the making or presentation of any false or fraudulent affidavit, declaration, certificate, voucher, or paper or writing purporting to be such, concerning any application, bond, bid, loan, or payment thereof or pertaining *to any other matter within the jurisdiction of the Secretary of the Interior, Administrator of the Federal Emergency Administration of Public Works, or Administrator of the Code of Fair Competition for the Petroleum Industry* * * * shall be punished by a fine not exceeding $5,000, or by imprisonment for a term of not more than 5 years.

Both in the Senate Judiciary Committee and on the floor of the Senate the suggestion was made that the "bill be extended and broadened in its terms so as to cover *all the departments* * * *." 78 Cong. Rec. 2858 (1934) (remarks of Sen. Borah) (emphasis added). The Senate agreed to the suggestion, and the bill was amended to substitute the words "any other matter within the jurisdiction of any department or agency of the Federal Government" for the words "any other matter within the jurisdiction of the Secretary of the Interior, Administrator of the Federal Emergency Administration of Public Works, or Administrator of the Code of Fair Competition for the Petroleum Industry." 78 Cong. Rec. 2858-2859 (1934). In view of this amendment, the title of the bill also was changed to "[a] bill to provide a penalty for the presentation of a false written instrument relating to any matter within the jurisdiction of any department or agency of the Federal Government." *Id.* at 2859.

The House Judiciary Committee likewise "broadened" the draft legislation proposed by the Secretary of the Interior "to punish [the proscribed acts] committed before *any department or agency of the Federal Government*, or corporation owned wholly or in part by the Government * * *." H.R. Rep. 829, 73d Cong., 2d Sess. 2 (1934). Congress's deliberate and thoughtful substitution of the phrase "any department or agency" for the enumerated agencies demonstrates that it intended the broad language of the statute to be afforded its full scope, and not to be restricted to the particular circumstances that provided the initial motivation underlying the legislation.[14]

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[14] To the extent Representative McKeown's remarks (78 Cong. Rec. 3724 (1934)) might be construed as intending a

In short, the history of 18 U.S.C. 1001 provides no basis whatever for refusing to give the language of the statute its ordinary and natural meaning. To the contrary, if anything the legislative history indicates that the statute should be broadly construed, and not limited to the particular situations that provided the immediate impetus for enactment. Accordingly, in the absence of any indication that Congress sought to exclude false crime reports from the reach of Section 1001, the Court should afford the plain language of the statute its full scope.

C. The Additional Objections of the *Friedman* Court to a "Plain Language" Construction of Section 1001 Are Without Merit

Cognizant that its construction of Section 1001 defied the plain language of the statute, the Eighth Circuit bolstered its decision in *Friedman* with three additional arguments that we can describe only as "makeweights." As we show below, none warrants departure from customary principles of statutory construction.

1. In support of its decision in *Friedman*, the Eighth Circuit noted (374 F.2d at 366 & n.1) that the general perjury statute, 18 U.S.C. 1621, prescribes a lesser maximum penalty than does Section 1001. Inferring (374 F.2d at 366) that "Congress [could not have] considered it more serious for one to informally volunteer an untrue statement to an F.B.I. agent than to relate the same story under oath before a court of law," the court of appeals concluded that Section 1001

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narrower scope, it must be remembered that he was commenting on the bill that contained the restrictive "intent to defraud" requirement. Moreover, his reference to the "new operations of the Government" in no way suggests that the reach of the statute was limited to those operations.

does not reach false reports of crime made to law enforcement officers.[15] The short answer to this argument is that which this Court gave to a similar contention in *Gilliland*, 312 U.S. at 95: "The matter of penalties lay within the discretion of Congress." See also *United States* v. *Batchelder*, 442 U.S. 114 (1979) (fact that conduct is covered by two statutes, each of which authorizes a different maximum penalty, no bar to sentencing defendant under more severe penalty).

In addition, we note that even under the *Friedman* court's restrictive construction of Section 1001, the statute would reach misconduct that is patently less serious than giving false testimony in a judicial proceeding. For example, the statute has been applied—consistently with the holding in *Friedman*—to such relatively minor offenses as lying on an application for temporary employment at the Post Office (*Blake* v. *United States*, 323 F.2d 245 (8th Cir. 1963)) and misstating the amount of sugar owned in an application for sugar ration books (*United States* v. *Wright*, 48 F. Supp. 687 (D. Del. 1943)).

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[15] At the time of the 1934 amendment to the false statement/false claims statute, by which the "matter within the jurisdiction" language was first added, the maximum penalty provided was a fine of $10,000 and ten years' imprisonment or both (48 Stat. 997). The term of imprisonment was decreased to the present five-year maximum in 1948, when the statute was divided into two parts—the false claims portion, 18 U.S.C. 287, and the false statements portion, 18 U.S.C. 1001. 18 U.S.C. 1621 provides for a maximum sentence of a $2,000 fine and five years' imprisonment. Under 18 U.S.C. 1623, enacted in 1970, subsequent to the decision in *Friedman*, perjury committed in grand jury and judicial proceedings may be punished to the same extent as a false statement under Section 1001, *i.e.*, by up to five years' imprisonment and a $10,000 fine.

Furthermore, Section 1001 overlaps numerous false statement statutes ranging from the trivial (see, *e.g.*, 16 U.S.C. 371 (false oath as to financial condition of user of free bathhouse at National Park)) to the more serious (see, *e.g.*, 18 U.S.C. 1007 (false statement to the Federal Deposit Insurance Corporation)). With respect to most of these offenses, the maximum penalties authorized by Congress are the same as or less severe than that authorized by 18 U.S.C. 1621,[16] thus indicating, according to the *Friedman* rationale, that Congress regarded them as no more serious than perjury. Yet, even applying the Eighth Circuit's restrictive definition of "jurisdiction," such offenses presumably also may be prosecuted and punished to the maximum extent under Section 1001—*i.e.*, more harshly than giving false testimony in a judicial proceeding may be punished under Section 1621. In short, any anomaly arising from the disparity between the penalty provisions of Sections 1001 and 1621 is not cured by the restrictive construction of Section 1001 adopted by the Eighth Circuit.

Moreover, the *Friedman* court's analysis unjustifiably assumes that making a false report to the FBI or Secret Service is necessarily a less serious offense than giving false information to a regulatory agency for the purpose of obtaining a pecuniary benefit or other governmental privilege. False crime reports in fact have great potential for causing harm, both be-

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[16] See, *e.g.*, 16 U.S.C. 371 ($300 fine and 60 days' imprisonment); 18 U.S.C. 1007 ($5,000/two years); 18 U.S.C. 1008 (false statement to Federal Savings and Loan Insurance Corporation) ($5,000/two years); 18 U.S.C. 1010 (false statement to Department of Housing and Urban Development and Federal Housing Administration) ($5,000/two years); 18 U.S.C. 1011 (false statement to federal land bank) ($5,000/one year).

cause they may precipitate wasteful and expensive criminal investigations and because they may bring to bear on innocent individuals the full brunt of the government's investigative and prosecutorial capabilities, infringing on the individual's privacy and jeopardizing his well-being. As the Second Circuit stated in *United States* v. *Adler*, 380 F.2d at 922: "The making of intentionally false statements to the F.B.I. calculated to provoke an investigation by that agency may cause more 'perversion' of authorized agency functions—and more harm to individuals—than false pecuniary and property claims which are clearly covered by the statute." The views of the dissenting judge in *Friedman*, 374 F.2d at 376-377, also are worth quoting at length:

> The fact is, false statements made in matters peculiarly within the "investigative jurisdiction" and authorized governmental function of the Department of Justice may be exceedingly vicious and potentially dangerous and harmful to others, especially in matters relating to the protection and enforcement of important constitutional rights of private citizens. Such statements may relate to matters involving the safety and protection of important officers in one of the three branches of our government, and conceivably might have a direct and important bearing on our national security. Any such statements would necessarily initiate expensive and time-consuming proceedings by government agents and the substantial exercise by them of their official functions—matters of much more public concern, in my opinion, than a relatively innocuous false civil claim for monetary benefit or personal privilege.

On the other hand, as noted above, Section 1001 as construed by the Eighth Circuit still covers a broad range of conduct, some of which is utterly trivial when compared to false crime reports. Accordingly, the fact that the maximum penalty applicable to violations of 18 U.S.C. 1001 exceeds that prescribed in the general perjury statute provides no basis for excluding from the reach of Section 1001 false statements made to investigatory, rather than regulatory, agencies.

Finally, the *Friedman* court failed to appreciate that when Congress prescribes a maximum penalty for a particular offense—especially one as broad as making "any false * * * statement" to "any department or agency"—it is not thereby suggesting that the maximum punishment would be appropriate for every variety of the described offense. It rather is Congress's intention that the courts employ their discretion to impose sentence, within the authorized range, according to the nature of the particular violation. As this Court stated in *Gilliland*, 312 U.S. at 95, the predecessor statute to Section 1001 "covered a variety of offenses and the penalties prescribed were maximum penalties which gave a range for judicial sentences according to the circumstances and gravity of particular violations."

2. The *Friedman* court's second objection to the "plain meaning" construction of Section 1001 is that it "would completely remove the necessity for taking oaths" (374 F.2d at 367). There is no basis for this concern.

The court first opined (374 F.2d at 367) that if a literal application of the statute were adopted, "[t]he numerous statutes authorizing investigative agencies to administer oaths would be rendered useless." At

the outset, we note that the fact that the taking of an oath is not an element of the offense stated in Section 1001 in no way eliminates the utility of oaths. Where used, oaths serve an important function in reminding individuals of their obligation to tell the truth and in serving notice that false statements could subject them to criminal prosecution. In any event, since FBI and Secret Service agents have only very limited authority to administer oaths—authority that is not applicable to situations like that presented here or in *Friedman*[17]—no statutory provision would be "rendered useless" by applying Section 1001 to the conduct at issue here.

Nor is there any basis for the *Friedman* court's assumption that if Section 1001 applies to false crime reports to the FBI and Secret Service it must also reach false statements made under oath in a court of law.[18] Indeed, the only two courts of appeals to consider both questions have held that Section 1001 covers the former but not the latter conduct. See *United States* v. *Lambert*, 501 F.2d 943, 946 (5th Cir. 1974) (en banc), and *United States* v. *Abrahams*, 604 F.2d 386, 392-393 (5th Cir. 1979); *United States* v. *Adler*, *supra*, and *United States* v. *D'Amato*, 507 F.2d 26 (2d

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[17] 5 U.S.C. 303 provides that "[a]n employee of an Executive department lawfully assigned to investigate frauds on or attempts to defraud the United States, or irregularity or misconduct of an employee or agent of the United States, may administer an oath to a witness attending to testify or depose in the course of the investigation."

[18] The court stated (374 F.2d at 367): "Since the Judiciary is an agency of the United States Government, a strict application of [Section 1001] would remove the time-honored and now necessary formality of requiring witnesses to testify under oath. We simply cannot believe that Congress intended to supplant the existing perjury statutes and destroy the protections they afford."

Cir. 1974). Significantly, the decisions of the courts that have refused to apply Section 1001 to false statements made during judicial proceedings generally have turned on the construction of the term "department or agency," rather than on the word "jurisdiction." Thus, these courts held that the federal judiciary is a "department or agency" within the meaning of Section 1001 only with respect to its housekeeping or administrative functions, not with respect to judicial proceedings themselves. See *United States* v. *Abrahams*, 604 F.2d at 392-393; *United States* v. *Erhardt*, 381 F.2d 173, 175 (6th Cir. 1967); *Morgan* v. *United States*, 309 F.2d 234, 237 (D.C. Cir.), cert. denied, 373 U.S. 917 (1962). Cf. *United States* v. *Allen*, 193 F. Supp. 954, 957-959 (S.D. Cal. 1961) (grand jury not an "agency of the United States" within the meaning of Section 1001).

These cases make clear that, whatever the relevance of Section 1001 to false statements made in the context of judicial proceedings, that issue is independent of the statute's applicability to false crime reports made to the FBI and Secret Service. Indeed, the application of Section 1001 to judicial proceedings would seem to follow more logically from the *Friedman* court's construction of "jurisdiction" as denoting the power "to make monetary awards," "adjudicate rights" and "dispose of the problem giving rise to the inquiry." 374 F.2d at 367, 368.

3. The *Friedman* court also was "influenced by the important social policy that is served by an open line of communication between the general public and law enforcement agencies" (374 F.2d at 369). In the court's view, adoption of a construction of Section 1001 that covers false crime reports would inhibit citizens from making good faith reports of

suspected offenses to law enforcement authorities (*ibid.*).

Like the Second and Fifth Circuits (*United States* v. *Lambert*, 501 F.2d at 946; *United States* v. *Adler*, 380 F.2d at 922) and the dissent in *Friedman*, 374 F.2d at 376, we think it unreasonable to suppose that an individual acting innocently and in good faith would be deterred from reporting a suspected crime by the specter of liability under Section 1001. After all, the offense stated in Section 1001 is the "knowing[] and willful[]" making of a false statement; there is no liability under the statute merely because the reported information turns out to be false. *United States* v. *Lambert*, 501 F.2d at 946.

In addition, because the law enforcement arm of government itself has a paramount interest in keeping its lines of communication with the public open, it can be expected not to employ Section 1001 in any way that would deter private citizens from reporting crime. As the Fifth Circuit noted in *Lambert*, 501 F.2d at 976, "the potential for overzealous application of § 1001 by law enforcement agencies poses a limited threat because investigators, to whom access to information is critically important, would not want to gain a reputation for routinely seeking to prosecute complainants and informants who give false information." In short, there does not appear to be a substantial danger that the construction of Section 1001 that we urge would deter individuals from conveying information that they believed to be truthful to the FBI or other law enforcement agencies.[19]

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[19] As the Fifth Circuit noted (*United States* v. *Lambert*, 501 F.2d at 946), there is "no objective data defining the extent of this risk [of deterrence], and judges differ in their subjective estimates." Particularly in these circumstances, the

The *Friedman* court's "makeweights" thus provide no basis for excluding voluntarily made false crime reports from the reach of Section 1001. Indeed, considerations of policy support precisely the opposite conclusion. Respondent's conduct, like that involved in *Bramblett*, 348 U.S. at 509, is not of the type "Congress could * * * have intended to leave * * * without penalty." As we discussed above, false crime reports have great potential for causing harm, both in the form of diverting scarce resources from bona fide governmental functions and in the form of the embarrassment and inconvenience that may be experienced by the innocent individuals about whom the false reports are made. In our view, such conduct, when intentionally committed, is unquestionably deserving of criminal sanction. As we showed above (pages 11-13, *supra*), the plain language of Section 1001 covers the conduct in question; the Eighth Circuit has offered no persuasive justification for construing it to create an unreasonable gap in the protection afforded federal agencies and the individuals subject to their investigations.

Eighth Circuit erred in injecting its own views on "important social policy" into what is purely a question of statutory construction.

CONCLUSION

The judgment of the court of appeals should be reversed.

Respectfully submitted.

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JANUARY 1984

☆ U. S. GOVERNMENT PRINTING OFFICE: 1984 451727 243